A. Varadarajan, J.

M. Dakshinamurthi Gurukkal *v.* The State of Tamil Nadu.

5th March, 1979.

W.P. No. 779 of 1976.

Tamil Nadu Hindu Religious and Charitable Endowments Act (XXII of 1959), section 56 (1)—Petitioner hereditary murai archaka *in temple—Suspended by Executive Officer and charges framed—Denial of charges by petitioner—Petitioner unwilling to participate in enquiry—No oral evidence let in—No proof regarding passing of resolution by the Board of Trustees—No finding that charges were proved — Order indicating that executive officer had already decided to dismiss petitioner—Dismissal of petitioner by Executive Officer—Violative of the principles of natural justice—Order of dismissal not in compliance with the provisions of the Act and therefore liable to be quashed.*

The records in the instant case showed that the petitioner (hereditary *murai archaka* in a temple) had expressed his unwillingness to appear at the enquiry against him on 11th January, 1972. But since it was admitted that the petitioner had not admitted in his explanation, any of the charges framed against him, it was incumbent upon the Board of Trustees to hear the oral evidence in support of the charges framed against the petitioner notwithstanding the fact that he had not chosen to appear at the enquiry held on 11th January, 1972 and come to conclusion that the charges have been proved. The oral evidence not having been heard, rule 2 of the Rules framed under section 56 of the Hindu Religious and Charitable Endowments Act, had not been complied with. Moreover, the order dated 11th April, 1972 of the Executive Officer did not in terms state that the charges had been proved. Since the alleged resolution dated 11th January, 1972 of the Board of Trustees had not been produced and it had been only contended in the counter-affidavit of respondents 1 to 3 that it was not necessary that the order of dismissal should be accompanied by the resolution of Board of Trustees and it was open to the petitioner to obtain a certified copy of the resolution, it had to be held that the respondents had not proved that any resolution was passed by the Board of Trustees on 11th January, 1972 for removing the petitioner from service. Moreover, the order of suspension with effect from 26th April, 1971 itself showed that the Executive Officer had decided on 20th April, 1971 itself that the petitioner should be dismissed, for that order said that he was being suspended from 26th April, 1971 till his dismissal from service by further order. Therefore, the principles of natural justice had not been complied with in this case, that no proper enquiry had been held before the petitioner was removed from service, that the order of dismissal passed by the Executive Officer of the Devasthanam was not in compliance with section 56 (*i*) of the Act and that the petitioner was therefore, entitled to the relief prayed for in the writ petition. The writ petition was acordingly allowed with costs.

R. S. Venkatachari, for Petitioner.

S. Ramlingam, Government Pleader, for Respondents Nos. 1 to 3.

W. C. Thiruvengadam, for Respondent No. 5.

R.S. — *Writ petition allowed.*

V. Ratnam, J.

D. Nataraja Asari *v.* Balambal Ammal.

13th March, 1979.

S.A. No. 191 of 1976.

Civil Procedure Code (V of 1908), *Order* 20, *rules* 12 *and* 18—*Suit for partition—Allotment of share income—Contention by defendant that share income should be restricted to a period of three years only not tenable—Order* 20, *rule* 18 *applies.*

The plaintiff filed a suit for partition and separate possession of her share in the suit property and also for an account of the income collected by the 1st defendant. The trial Court granted a preliminary decree for partition and also provided that the plaintiff could apply for ascertainment of the income from the property. The plaintiff filed an application for appointment of a Commissioner to divide the property by metes and bounds and payment of her share of the income from the property in question. The Commissioner made his report. The trial Court on a consideration of the report allotted the southern portion of the property to the plaintiff and also directed that a sum of Rs. 4,160 be paid to the plaintiff by the 1st defendant towards her share in the income. On appeal by the 1st defendant this was confirmed. The 1st defendant filed a second appeal and contended that the period for which the plaintiff could be awarded her share of income was three years from the date of the decree

Held: Order 20, rule 18, Civil Procedure Code, would govern the present case and not Order 20, rule 12 and therefore, the objection of the appellant that the mesne profits could not be given for more than three years from the date of the decree did not hold good.

The fixation of mesne profits at Rs. 4,160 for the period in question and the allotment of the property to the share of the first defendant as had been done in the final decree appealed against were unassailable.

N. Sivamani and *V. Krishna Mitra,* for Appellant.

A. S. Udaya Shankar, for Respondent.

S.J. ——— *Appeal dismissed.*

M. A. Sathar Sayeed, J.

Pandian *v.* State, represented by the Inspector of Police, Ramanathapuram.

18th May, 1979.

Crl. M.P. No. 2672 of 1979.

Criminal Procedure Code, 1973 *(II of* 1974), *section* 439—*Accused in remand — Application for bail—Accused suffering from epilepsy (fits)—Conditional bail granted.*

The accused was in remand for alleged offences under sections 302 and 307, Indian Penal Code read with section 28 of the Indian Arms Act. The accused filed a petition before the High Court to be released on bail pending disposal of the case, on medical grounds. The accused was suffering from epileptic fits.

Held: In view of the fact that the petitioner was not doing well and more particularly when the petitioner was suffering from fits which were not completely controlled or cured by the jail authorities, it was but just and proper that the petitioner should be released on bail.

T. S. Arunachalam, for Petitioner.

M. Karpagavinayakan, for State.

S.J. ——— *Bail granted.*

T. Sathiadev, J.

Mahalakshmi *v.* P. S. Rajeswari *alias* Santha Bai.

16th May, 1979.

C.R.P. No. 1811 of 1978.

The Pondicherry (Extension of Laws) Act (XXVI of 1968), *section* 4—*French Code (Civil), Article* 2217—*Civil Procedure Code (V of* 1908), *section* 45-*A*—*Mortgage deed executed in Pondicherry—Executable decree as per Article* 20 *of the decret of* 1887—*Decree can be executed after the coming into force of the Civil Procedure Code.*

M executed a mortgage deed for Rs. 35,000 in Pondicherry on 27th January, 1965. *M* died in 1969. The lower Court allowed the execution of the mortgage-deed which itself was a decree under the French law. Two payments were also received by the mortgagee the first of which was on 31st March, 1967 a sum of Rs. 3,033 and on 3rd April, 1969 a sum of Rs. 5,000. A commandment was also issued on 16th October, 1968 and the mortgage-deed become a decree that could be directly executed. The lower Court accordingly ordered the settlement of proclamation for sale of the property. This was objected to by the judgment-debtor's legal representatives who contended that after the passing of the Central Act XXVI of 1968, the concept of mortgage-deed automatically being treated as an executable decree had disappeared and that no commandment could be issued after the applicability of the Civil Procedure Code in Pondicherry. The revision is filed by the legal representative of *M* as against the order of the lower Court allowing execution of the mortgage-deed decree,

Held: On the date when the mortgage was created under the French law then in force, it had already become an executable decree, and this was consequent to what was provided in Article 20 of the decree in 1887. Such a "substantive right" having been conferred under section 4 (2) (*a*) and (*d*) as if the Act XXVI of 1968 had not been passed, the petitioner herein cannot contend that there was no valid decree in force to be pursued with in execution under the Civil Procedure Code. The mortgage-deed having come into existence before 2nd June, 1968 it had already acquired the character of an executable decree and it would have to be treated as if it was a decree that had been made under the Civil Procedure Code.

Being a decree, section 45-A having not substituted any other provisions of the Civil Procedure Code, they would be very much available for the enforcement of such a decree.

In view of the saving provision found in section 4 (2) of Act XXVI of 1968 in spite of section 45-A of the Civil Procedure Code, it would be open to such a decree-holder to move the executing Court under the present provisions of the Civil Procedure Code, because what followed such a decree are only procedural aspects, and no one can claim a vested right to a particular procedure, and in this view, the respondent can seek the relief, according to the law in force at the time when she seeks the execution of the gross copy of the notarial mortgage-deed executed when French laws were in force.

M. Raghavan, for Petitioner.

P. B. Ramanujam and *J. R. K. Bhavanathan,* for Respondent.

S.J. ——— *Petition dismissed.*

V. Ratnam, J.

Abdul Mallick Sahib *v.*
Manicka Kounder.

24th April, 1979.

S.A. No. 518 of 1976.

(A) *Transfer of Property Act* (*IV of* 1882), *sections* 106, 111 (a) *and* 117—*Lease for agricultural purposes for a fixed period—Expiry of period—Notice to tenant reminding him of the expiry of period—Notice, whether valid.*

(B) *Transfer of Property Act* (*IV of* 1882), *section* 106—*Applicability to agricultural leases.*

The notice to the lessee in this case merely informed him that the lease would expire by efflux of time on 1st Chitrai, 1972, and therefore he was reminded about the obligation he had undertaken under the terms of the lease to redeliver possession of the properties on the expiry of the lease deed. This was nothing except a reminder in that sense to the appellant that his lease was about to expire and therefore, squarely section 111 (*a*) of the Transfer of Property Act, would apply and in that sense, it may not be strictly necessary to issue a notice under section 106 of the Transfer of Property Act, because the lease itself would automatically expire by efflux of time limited thereby and a notice was nothing but a reminder to that effect and therefore it was unnecessary that such a reminder should conform to the requirements of section 106 of the Transfer of Property Act.

In this case it was unnecessary for the purpose of determining an agricultural lease to issue a notice conforming to section 106 of the Transfer of Property Act. Even on the footing that section 106 would be applicable to agricultural leases, unless a notification is published by the State Government in the Official Gazette in accordance with section 117, it was doubtful whether section 106 could be invoked at all with reference to agricultural leases.

S. V. Jayaraman and *V. Kannan,* for Appellant.

R. Mohan and *V. Veeraraghavan,* for Respondent.

R.S. ——— *Appeal dismissed.*

Padmanabhan, J.

D. Suseela *v.*
The Co-operative Tribunal.

26th July, 1979.

W.P. No. 589 of 1977.

Tamil Nadu Co-operative Societies Act (*LIII of* 1961), *section* 96 (3)—*Delay in communication of the order—Date on which there is actual or constructive communication — Two months to be computed from that date for preferring an appeal.*

When section 96 (3) of the Tamil Nadu Co-operative Societies Act, 1961 referred to the fact that an appeal should be preferred within two months from the date of the decision, order, award, refusal, registration or approval complained of, it should be taken that the two months prescribed for preferring the appeal was from the date on which there was either actual or constructive communication of the said order to the party concerned.

T. S. Subramanian, for Petitioner.

S.J. ——— *Petition allowed.*

Maheswaran, J.

Rathinam and Arthanari, Accused 1 and 2 *v.* The State of Tamil Nadu.

12*th July*, 1979.

Crl.R.C. No. 298 of 1978.

Tamil Nadu Prohibition Act (X of 1937), *section* 4 (1)-(j)—*Madras City Police Act (III of* 1888), *section* 75—*Arrack—Consumption of—Doctor examining the accused—Conviction based on smell alone—Revision—Mere circumstance of smell alone not adequate for conviction—Benefit of doubt given to the accused and sentence set aside.*

The two accused were found quarrelling at the junction of two roads. They were found to have consumed arrack. They were charged for the offence under section 4 (1) (*j*) of the Tamil Nadu Prohibition Act and section 75 of the Madras City Police Act. Relying on the evidence of a doctor, P.W. 2, the learned Magistrate convicted and sentenced them and on appeal the conviction and sentence were confirmed. The accused filed a revision. It was contended for the accused that conviction could not be based on mere smell alone. The evidence of the Doctor disclosed that the syes were slightly congested, pupils normal, speech normal, gait normal; and breath smell of arrack. The other symptoms such as redness of eyes, incoherent speech or dilation of the pupils were not there.

Held: The evidence of the Doctor, P.W. 2 showed that if a person was awakened in his sleep his eyes might be slightly congested. The only symptom other than the smell of arrack found by the doctor was the congestion of eyes of the revision petitioners, the cause of which can be attributed to the awakening of the revision petitioners at night. The doctor had also stated that fermented sugarcane juice if taken might emanate the smell of arrack in breath. From the mere circumstance of smell alone, the inference that the accused had consumed arrack could not be drawn. This was a fit case where the benefit of doubt had to be given to the accused. Revision was allowed.

T. Somasundaram, for Accused.

Public Prosecutor, for State.

S.J. ——— *Revision allowed.*

T. Sathiadev, J.

T. G. Shankar Rao *v.* State of Tamil Nadu by Collector of Thanjavur.

11*th June*, 1979.

C.R.P. No. 3363 of 1975.

Tamil Nadu Inams (Supplementary) Act (XXXI of 1963), *section* 5 (1)— *Tamil Nadu Minor Inams Estate (Abolition and Conversion into Ryotwari) Act (XXX of* 1963), *section* 1 (5)—*Scope and applicability—Publication in the gazettee and in conspicuous place in the village—Purpose.*

The real purpose behind making publication in the Gazettee and in a conspicuous place in the village is to enable the affected parties being made aware of the enforcement of the enactments, so that the rights, if any, which can be worked out by such affected parties may well be agitated by them within the time prescribed in the enactments. This is clearly borne out by section 1 (5) of Act XXX of 1963. The Supplementary Act refers to section 1 (5). But while using the expression about the date of publication in the District Gazette, it has not gone further to incorporate the entirety of section 1 (5) of Act XXX of 1963, as part of section 5 of Act XXXI of 1963. When such a situation arises, and when the supplementary enactment relies upon what is provided in the earlier. Tamil Nadu Act XXX of 1963, the proper course is to adopt what would be not only beneficial to the affected parties but also would make it more purposeful. It cannot be underestimated that the provision for publication to the knowledge of the affected parties is of paramount importance, and when such a right has been contemplated and has been provided for, merely because the later part of section 1 (5) of Act XXX of 1963 is not included in section 5 of Act XXXI of 1963, it cannot be said that the period should be calculated only from the date of publication in the District Gazette and not from the date when it was published in a

conspicuous place as provided in Act XXX of 1963.

B. Kumar, for Petitioner.

Government Pleader and *V. Sridevan*, for Respondents.

R.S. ——— *Petition allowed and remanded.*

Ismail, J.

Renown Biscuits Company, a partnership firm, Biscuit Manufacturers, Suffon Road, Cross Lane, Bombay-27 v. Kamalanathan.

5th January, 1979.

C.R.P. No. 1348 of 1977.

(A) *Civil Procedure Code (V of 1908), sections* 20 *and* 21—*Cause of action—Accrual—Agreement vesting jurisdiction in Court situate in a particular place—Agreement, if can take away jurisdiction of another Court having jurisdiction.*

(B) *Civil Produre Code (V of 1908), section* 115—*When order complained of can be interfered by the High Court.*

A suit was filed by the respondent herein for recovery of a sum of Rs. 2,500 on the basis of the appointment of plaintiff-respondent as the sole selling distributor of the biscuits manufactured by the petitioners in the Districts of Coimbatore and Nilgiris on 5th July, 1961 and on account of transactions that took place between the parties. The petitioner raised a preliminary objection to the jurisdiction of the Court of the District Munsif, Coimbatore. His case was that clause 13 of the agreement entered into between the parties contemplated the Courts situate in the City of Bombay alone having jurisdiction to entertain any dispute between the parties. The existence of such a clause in the agreement was not disputed. Equally, as part of the cause of action arose within the Court of the District Munsif, Coimbatore, that Court had also jurisdiction. In view of this, the petitioner's case was that notwithstanding the fact that in law the Court at Coimbatore had jurisdiction, in view of the agreement entered into between the parties, the respondent should have filed the suit only in the Court in Bombay, and therefore the Court in Coimbatore cannot entertain the suit in question. The learned District Munsif held that he had jurisdiction to entertain the suit and decided the question of jurisdiction in favour of the respondent herein. It was this order which was sought to be challenged in the present petition.

Held: There was no controversy on the following facts:— (1) The Court in Bombay had jurisdiction, because the petitioner-defendant resided in Bombay. (2) The Court in Coimbatore had jurisdiction because a part of the cause of action arose there. (3) The parties in clause 13 of the agreement entered into between them had agreed that no Court other than the Courts in the City of Bombay shall have jurisdiction to decide any dispute that may be arising between the parties. In such a context, the general rule is no doubt that the plaintiff-respondent will have to file the suit in the Court in Bombay. However the Gujarat High Court in *M/s. Snekal Kumar Sarabai* v. *M/s. Economic Transport Organisation and others*, (A.I.R. 1975 Guj. 72), had struck a new path to the effect that the stipulation can be ignored by the excluded Court which otherwise possesses jurisdiction if the stipulation was considered to be oppressive having regard to the surrounding circumstances includig States involved.

What was involved in this case was not total want of jurisdiction on the part of the Court of the District Munsif, Coimbatore. But for the contract entered into between the parties, there is no dispute under the Code of Civil Procedure, the learned District Munsif, Coimbatore will have jurisdiction since a part of the cause of action arose within the jurisdiction. In such a context when the plaintiff is to be compelled to file a suit in the Court of Bombay, it is not because that the Court in Coimbatore did not have jurisdiction in law, but parties having entered into a contract between them, they are compelled to stick to the terms of the contract. In this particular case having regard to the stake involved and the distance between Coimbatore and Bombay, it will be causing failure of justice if the plaintiff is driven to go to Bombay for the

purpose of instituting the suit for the recovery of a small amount. The learned District Munsif was wrong in holding that he had jurisdiction to try the suit. Yet the conclusion of the lower Court cannot be interfered with in exercise of the power of the High Court under section 115 of the Code of Civil Procedure.

The objection to jurisdiction had been taken by the petitioner at the earliest possible opportunity and yet what has to be established under section 21 (1) of the Code of Civil Procedure, is that entertainment of the suit by the learned District Munsif, Coimbatore has caused failure of justice. It cannot be held that there has been a failure of justice by the learned District Munsif holding that he has jurisdiction to entertain and try the suit.

K. Chandramouli, for Petitioner.

V. V. Lakshmi Narayanan, for Respondent.

R.S. ——— *Revision petition dismissed.*

Natarajan, J.

Mohammed Ibrahim *v.* Abdul Azeez.

20th June, 1979.

C.R.P. No. 236 of 1979.

Civil Procedure Code (V of 1908), Order 37, rule 2—Under chapter suit — Allegation of plaintiff obtaining assignment of promissory note from original promisee — Defendants prayer for unconditional leave—Allegation of defendants being agriculturists entitled to benefits—Conditional leave granted.

An under chapter suit was filed by the respondent on the foot that he had obtained an assignment of the suit promissory note from the original promisee.

The revision petitioners applied under Order 37, rule 2, Civil Procedure Code, praying for unconditional leave to defend the suit but the Subordinate Judge declined to grant unconditional leave and granted them conditional leave by calling upon them to deposit one half of the suit amount before entering defence. To challenge the correctness of that order the petitioners preferred the present revision petition.

Held: The contention of the petitioners that the Subordinate Judge had found that their claim raised a triable issue for consideration in the suit cannot be sustained. The plea regarding the status of the petitioners as agriculturists entitled them to only certain benefits in the matter of scaling draw of interest. It will not impinge upon their liability to pay the amount claimed under the suit promissory note especially when the petitioners had not denied their liability under the promissory note. Such being the case, it is futile for the petitioners to contend that they have raised a triable issue in the case and in view of the acceptance of their stand by the Court below, they should not have been called upon to deposit one half of the suit amount as a condition precedent. In that view of the matter, the order of the Court below can well be sustained.

The petitioners were given two months time from the date of the High Court's order to deposit the amount directed by the lower Court to be deposited.

V. Sridevan, for Petitioner.

P. Ananthakrishna Nair, for Respondent.

R.S. ——— *Revision dismissed.*

T. Ramapraasada Rao, CJ. and Natarajan, J.

Kannammal Achi *v.* Subbalakshmi.

27th June, 1979.

L.P.A. No. 10 of 1976.

Tamil Nadu Debt Relief Act (XXXVIII of 1972), sections 6 and 15—Scaling down of mortgage debt — Tamil Nadu Agriculturists Relief Act (IV of 1938), sections 7 and 8—Scope and applicability.

The respondent as judgment-debtor in a mortgage action sought for scaling down of a mortgage debt which had ripened into a mortgage decree, under section 15 of Act XXXVIII of 1972, under the following

circumstances. In 1970 a mortgage was admittedly executed by the respondent in favour of the appellant. The appellant filed a suit in which the respondent *inter alia,* claimed the status of a "debtor" within the meaning of Act XXXVIII of 1972, and therefore the incidental and consequential benefits arising thereunder. But before the preliminary decree was passed on 18th April, 1973, the respondent as defendant-debtor gave up that plea and submitted to a decree. The result was that a preliminary mortgage decree was passed on 18th April, 1973. Accepting the correctness of the decision and also his status as ordinary judgment-debtor in a mortgage action without any further privileges under Act XXXVIII of 1972, the respondent is said to have paid a sum of Rs. 1,580 on 18th October, 1973 and asked for further time for the payment of the mortgage debt. Ultimately the final decree was passed on 11th March, 1974. Soon thereafter the respondent paid a sum of Rs. 5,000 towards the final decree and again sought for further time to discharge the mortgage debt. Long after that on 4th November, 1974, the application, out of which the present appeal arises was filed once again seeking relief under Act XXXVIII of 1972, under section 15 of the Act, far scaling down the mortgage debt. The Subordinate Judge negatived the contention of the appellant, having regard to the fact that the respondent as judgment-debtor had given up such alleged privilege even before the passing of the preliminary decree and his conduct thereafter showed that she did not want to revise her stand by seeking such a right or privilege under Act XXXVIII of 1972. This decision was taken up in appeal and the High Court was of the view, that having regard to the language of section 6 of the Act XXXVIII of 1972, the respondent was entitled to seek the scaling down of the mortgage debt, even though such a decree was one which had been passed after the induction of Act XXXVIII of 1972. The question therefore is whether the privilege or concession granted to judgment-debtors whether in a mortgage action or otherwise, is applicable to decrees which were passed after the introduction or coming into force of Act XXXVIII of 1972.

Held, that Act XXXVIII of 1972, was only an Act to provide relief to certain indebted "persons in the State of Tamil Nadu," and section 6 thereof provides that, notwithstanding any law, custom, contract or decree of Court to the contrary, all debts payable by any debtor on the publication of the Act shall be scaled down in accordance with the provisions of that chapter. The language employed in section 6 of the Act XXXVIII of 1972 is materially the same as the language employed by the Legislature in section 7 of Act IV of 1938. Section 7 of the Act IV of 1938 provided, that, 'notwithstanding' any law, custom, contract or decree of Court to the contrary, all debts payable by an agriculturist at the commencement of the Act shall be scaled down in accordance with the provisions of this chapter". On a comparison of the language used in section 6 of Act XXXVIII of 1972 and the language of section 7 of Act IV of 1938, it is seen that except the difference in the expression "payable by an agriculturist" and "payable by any debtor" the substance of the relief granted by both the Acts appears to be the same.

In this case the relief that could be asked by a debtor could only be with reference to a decree passed before the commencement of the Act XXXVIII of 1972, and not to those decrees passed after the date of the commencement of the Act. There is yet another feature which would not entitle the respondent to the relief asked for. She sought for relief under Act XXXVIII of 1972 at the written statement stage and gave it up at the stage when the preliminary decree was passed. Her conduct as such showed that she was not inclined to agitate the matter further as is seen from the fact that even after the final decree she was prepared to pay various sums of money towards the final decree and was only asking for time for further payment. This would also estop the respondent from seeking the same relief and once again under the same Act. The appeal was accordingly allowed.

B. Rajagopalan, for Appellant.

K. Raman, for Respondent.

R.S. ——— *Appeal allowed.*

S. Padmanabhan, J.

M. S. Babu *v.* The Commissioner, Corporation of Madras.

3rd July, 1979.

W.P. No. 967 of 1977.

Madras City Municipal Corporation Act (IV of 1919), *sections* 85 *to* 97 *and Amending Act,* 1961 *(X of* 1962), *section* 86—*Petitioner, a peon in the Revenue Department of Corporation of Madras—Charges framed against him —Allegation of failing to deposit amount of tax into treasury but misappropriating the same—Denial of the charges by petitioner—Oral enquiry by Revenue Officer — Enquiry Officer provisionally concluding charges against petitioner proved — Show cause notice issued—Further explanation given — Proceedings before Commissioner, Corporation of Madras — Charges held proved — Dismissal of petitioner from service. — No bye-laws framed by Corporation—Appeal by petitioner to Special Officer—Confirmation of order of dismissal—Communication of the order by Revenue Officer—Order of dismissal liable to be quashed.*

A writ petition was filed by one *'B'* working as a peon in the Revenue Department of the Corporation of Madras to set aside the order dismissing him from service. It was stated that he was first appointed as a peon and then transferred to the Revenue Department and posted to work under tax collector *'K'*. Charges were framed against him stating that he had not remitted the money collected by him from one *'S'* into the Corporation treasury nor returned the money and thereby misappropriated the amount. He denied the charges. An oral enquiry was conducted and the Revenue Officer came to the provisional conclusion that the charges were proved and the petitioner should be dismissed from service. The Commissioner, Corporation of Madras by his proceedings finally held that the charges levelled against the petitioner were proved and dismissed the petitioner from service. An appeal filed by the petitioner to the Special Officer was also dismissed and the order was communicated to him by the Revenue Officer.

Held, that the order of the Special Officer was not served on the petitioner but only a communication from the Revenue Officer was served on him to the effect that the Special Officer had dismissed the appeal. Further on the date on which the Commissioner passed the impugned order he was not competent to do so and the order of dismissal passed against the petitioner was without jurisdiction and void. On the date of the Amending Act the bye-laws as provided for under section 86 had not been framed. In these circumstances the order of the Special Officer was also illegal and had to be quashed.

A. Radhakrishnan, for Petitioner.

Rammohan, for Respondent.

R. S. ———— *Petition allowed.*

T. Ramaprasada Rao, CJ.

Vincent *v.* T. Raman.

6th July, 1979.

C.R.P. No. 2950 of 1976.

Tamil Nadu Buildings (Lease and Rent Control) Act (XVIII of 1960) *as amended by Act (XXIII of* 1973), *section* 10 (3) (a) (i) *—Scope and applicability—Primary requirement is that the landlord should not occupy a residential building of his own.*

The petitioner was the landlord. He filed an application under section 10 (3) *(a) (i)* of the Tamil Nadu Buildings (Lease and Rent Control) Act (XVIII of 1960), to evict the respondent-tenant, on the ground that he required the premises for his own occupation and that such requirement was *bona fide.* Incidentally the question was raised in the course of the trial whether the petitioner had the status of a landlord and whether there was a valid termination of tenancy. Both the Rent Controller and the Appellate Authority found that the petitioner was a landlord within the meaning of the Act and that there had been a valid notice of determination of tenancy. But on the question whether the requirement by the petitioner of the premises for his own occupation was *bona fide* or not, while the Rent Controller held in favour of the landlord-petitioner, the Appellate Authority held against him. The only ground on which the Appellate Authority held against the landlord petitioner was that he had failed to prove that he was living as a tenant paying

rent to a relation-landlord and that, in the absence of proof of payment of rent to another landlord, the fact that the petitioner was residing with his aunt would not suffice to satisfy the requirement of section 10 (3) (*a*) (*i*) of the Act. On revision,

Held: Section 10 (3) (*a*) (*i*) of the Act is very clear, that a landlord may apply to the Controller for an order directing the tenant to put the landlord in possession of the building, in case it is a residential building if the landlord requires it for his own occupation and if he is not occupying a residential building of his own. Every person shall have a shelter and if he secures such a shelter with a close relation of his, it is not an equation for saying that he is occupying a residential building of his own. The accent shall not be on the payment of rent or non-payment of rent to a landlord for the premises which he is occupying, but the accent should be on the fact whether the building in which he is residing or which he is occupying is his own or not. Indisputably the other property in question belongs to the aunt of the petitioner with whom he was residing from his childhood and that he now requires his own premises in the occupation of the tenant for the purpose of his own independent living. The finding of the Rent Controller that the requirement of the petitioner was *bona fide* is based on acceptable material and the conclusion of the Appellate Authority is not supportable. This is because the Appellate Authority thought that, the petitioner must prove that he is residing in a rented premises paying rent to the owner of that building which he is occupying. The Appellate Authority also thought that, even though the petitioner was residing with a close relation of his, since he was not paying rent for such occupation he would not be entitled to seek for possession of his own building. The language of section 10 (3) (*a*) (*i*) does not lend support to such a conclusion.

E. S. Venkatesan and *S. J. Jayadev*, for Petitioner.

T. R. Srinivasan and *Ramamurthy*, for Respondent.

R.S. ——— *Civil Revision Petition allowed.*

T. Ramaprasada Rao, CJ. and *S. Natarajan, J.*

Sankari Cement Alai Thozhilalar Munnetra Sangam, by its Secretary K. Karunakaran *v.*

The Government of Tamil Nadu by its Secretary, Labour and Employment Department, Fort St. George, Madras-9.

10*th July*, 1979.

W.A. No. 234 of 1979.

Constitution of India (1950), Article 226—Court exercising jurisdiction under Article 226—Order by Government in due exercise of their statutory authority—Court not competent to review that order.

The appellant filed a writ petition seeking for a writ of *certiorari* to quash the order of of the first respondent in G.O. Rt. No. 708 Labour and Employment dated 5th April, 1975. Certain disputes arose as between the second respondent-management and its workers. A domestic adjustment was made as between the management and the workmen in and by which they agreed they should enquire into the alleged misconduct of 19 workmen and submit their decision to the Minister for Labour of the State Government for his final decision and action. This was by mutual agreement. Pursuant to this discplinary proceedings were initiated by the second respondent against the said workmen and it dismissed the entire lot of them. The Minister for Labour after reviewing the situation was of the view that 14 out of the 19 workmen should be taken back to employment as new entrants and that the decision in the disciplinary proceedings as against the remaining 5 workers should stand. The five workers were not satisfied with the ultimate decision of the Minister for Labour and they raised an industrial dispute. The necessary conciliation proceedings were initiated by the Labour Officer and the report of the Labour Officer was also considered by the Government which was by then asked to refer the non-employment of the five workers to the Industrial Court. The Government, after calling for the conciliation report from the Labour Officer, and in consultation with

the Commissioner for Labour, were of the view that there was not sufficient material for them to act under section 10-A of the Industrial Disputes Act. Consequent upon such refusal the present writ petition out of which this appeal arises, was filed to quash the order of the Government under which they refused to act under section 10-A.

Held: It is not for the Court, exercising jurisdiction under Article 226 of the Constitution to remove an order made by the Government in due exercise of their statutory authority, after being satisfied as to the merits of the case. *Certiorari* is a writ issued for the removal of orders made by quasi-judicial Tribunals, who are statutory functionaries or functionaries exercising quasi-judicial powers. It is only in cases where the Court is satisfied that there is an error apparent or deliberate non-exercise of jurisdiction which the statutory Tribunal has or that while exercising jurisdiction the principles of natural justice have been violated that a writ of *certiorari* is issued to quash such orders made by quasi-judicial Tribunals. There has been no improper exercise of power or jurisdiction which alone can compel the Court to issue a rule under Article 226 of the Constitution.

K. Doraisami, for Appellant.

R.S. ——— *Writ appeal dismissed*.

M. M. Ismail and *S. Mohan*, *JJ*.

V. Bickawa *v*. M. Venkatesan.

24th July, 1979.

C.R.P. No. 883 of 1978.

(A) *Tamil Nadu Buildings (Lease and Rent Control) Act (XVIII of* 1960) (*as amended by Act XXIII of* 1973), *section* 10 (8)—*Scope and applicability—Applicable not only to eviction under section* 10 *but also to eviction under section* 14 *of the Act*.

(B) *Tamil Nadu Buildings (Lease and Rent Control) Act (XVIII of* 1960) (*as amended by Act XXIII of* 1973), *section* 2 (b)—*"Landlord"—Definition—Property purchased benami in the name of wife—Husband acting as general agent of wife—Petition for eviction filed without consent of wife by husband—Whether maintainable*.

The petitioner herein filed a petition against the respondent before the Court of Small Causes, Madras, for eviction of the respondent under section 14 (1) (*b*) of the Tamil Nadu Buildings (Lease and Rent Control) Act, 1960, on the ground that the petitioner herein required the premises for the immediate purpose of demolition and reconstruction. The respondent resisted the petition putting forward the contention that the requirement of the petitioner was not *bona fide*. The Rent Controller, while finding that the requirement of the petitioner was *bona fide* held that the property was purchased *benami* in the name of his wife. He held that the petition was maintainable and directed eviction of the respondent. Against the order of the Rent Controller the respondent herein preferred an appeal to the Appellate Authority. The Appellate Authority while confirming the conclusion of the Rent Controller that the requirement of the petitioner was *bona fide*, allowed the appeal and dismissed the petition filed by the petitioner herein on the sole ground that the petitioner was only an agent of the owner of the property and consequently he could not maintain the petition without the previous written consent of the owner, as required under section 10 (8) of the Act. The result was that the petition filed by the peti-

tioner herein under section 14 (1) (b) of the Act for eviction of the respondent was dismissed.

On revision to the High Court,

Held: Section 10 (8) of the Act will apply to eviction under section 10 as well as section 14 of the Act. Section 10 (8) does not use the expression "Eviction under this section". Further, section 10 (8) is a part of section 10 and section 10 (1) takes in not only eviction under section 10 but also eviction under sections 14 to 16. Consequently merely as a matter of construction it has to be concluded that the applicability of section 10 (8) is not confined or restricted only to eviction under section 10, but it will extend also to eviction under sections 14 to 16. The definition of tenant takes in a number of persons who may have a very tenuous connection with the property. Obtaining eviction of a tenant in the occupation of a building has got serious consequences both for the tenant as well as the landlord and in such a context, if the Legislature had taken the view that where a person who applies to the Rent Controller for eviction of a tenant is not really the owner of the building, but happens to be a person appointed by the owner merely for the purpose of collecting the rent, such a person must obtain the previous consent of the landlord for taking proceedings for eviction of the tenant, it cannot be said that such a provision is not a reasonable one. A person who is appointed merely for the purpose of collecting the rent as an agent of the landlord may take into his head to apply for eviction of the tenant of the premises in question, whether under section 10 or section 14 of the Act and take the consequences flowing therefrom. No prejudice will be caused to the landlord for the simple reason that, if a person appointed only for the purpose of collecting the rent from the tenant files a petition for eviction under section 14 without reference to the owner of the building, it may produce very serious consequences. That section contemplates the landlord taking all necessary steps for the purpose of immediately demolishing the building and reconstructing the same within the period prescribed under the statement and giving an undertaking to the Court also to such an effect. If a person, who was appointed only for the purpose of collecting the rents, did all things and ultimately it was found that they were not binding on the landlord namely, the owner of the building, the tenant who had been evicted from the property would be put to serious inconvenience and the landlord himself would not be obliged to honour the commitments made by the agent on his behalf. Under these circumstances if the Legislature had thought fit to provide for the agent obtaining the previous consent of the landlord, it could not be said that such a provision made by the Legislature, was unreasonable. Consequently both as a matter of construction and as a matter of common sense it has to be concluded that the provisions of section 10 (8) apply not merely to eviction under section 14 of the Act. Having regard to the object of the provision, the Legislature could not have contemplated any such situation and that section 10 (8) of the Act applies only to a person who has been appointed as an agent only for the purpose of collecting the rent from the building and will not take in other types of agents of the landlord, who may be empowered by the landlord himself to take proceedings for eviction also. Consequently the class of persons contemplated by section 10 (8) of the Act is a very limited class and only with reference to that class, the requirement of obtaining the previous written consent of the landlord for filing a petition for eviction will apply.

The petitioner in this case will not fall within the scope of section 10 (8) of the Act requiring him to obtain the previous written consent of his wife for the purpose of filing a petition for eviction, with the result the petition for eviction filed by the petitioner herein cannot be said to be not maintainability by virtue of the provisions contained in section 10 (8) of the Act.

K. Srinivasan and *K. Raghunathan*, for Petitioner.

Kuriam Arumugan and *Joseph*, for Respondent.

R.S. —— *Civil Revision Petition allowed.*

A. Varadarajan, J.

R. Soundarapandian *v.*

The State of Tamil Nadu, Department of Industries, represented by the Special Secretary to Government, Madras-5.

14*th August*, 1979.

W.P. Nos. 2158 of 1977 etc., 2518 of 1977.

Mines and Minerals (Regulation and Development) Act (LXVII of 1957), Second Schedule—Royalty on sea-shells, whether could be levied.

The petitioners were minors and dealers in sea-shells in and around Tuticorin. The petitioners had not obtained any licence or lease for mining sea-shells by digging patta lands belonging to private parties and dealing in the same. Only lime shell is included in Mines and Minerals (Regulation Development) Act and not sea-shells. The authorities issued an order stating that royalty was leviable on them. It was further stated that the sea-shells were the same as lime-shells and the salt pan gypsum and sea-shell quarried from patta lands was transported to various places for sale and the shells were used for commercial purposes without licence.

Held, that royalty could not be levied on sea-shells which were not included in the Second Schedule to the Act. In the absence of any notification by the Government of India under section 13 (2) of the Act grouping shells as associated minerals and having regard to the fact that sea-shell was not included as an item in the Second Schedule to the Act, it was not open to the authorities to say that the impugned order and the Rules thereunder should be made applicable to sea-shells.

M. N. Padmanabhan and *P. Ramachandran*, for Petitioners.

The Government Pleader, for Respendent.

R.S. ——— *Writ Petition allowed.*

A. Varadarajan, J.

S. P. Janakipathi *v.*

The Presiding Officer, Labour Court, Madras.

19*th June*, 1979. W.P. No. 3655 of 1976.

Constitution of India (1950), Article 226—Gratuity — Payment of — "Pay" means average monthly salary drawn — "Salary" whether includes dearness allowance—"Pay" and "Wages" not different and included dearness allowance.

The petitioner raised an industrial dispute in respect of payment of gratuity and obtained an award against the management. The award Exhibit P-1 provided for payment of gratuity at half a month's salary for every year of service subject to maximum of 15 months' salary. A note had been added to the award saying that "pay" means the average monthly salary drawn during the last year of the employees' service. A dispute arose between the parties as to whether salary included basic pay and dearness allowance. In the claim petition filed by the petitioner, the Labour Court held that salary mentioned in the award Exhibit P-1 would mean only basic pay and would not include dearness allowance. Against this, the petitioner filed a writ petition contending that salary includes dearness allowance.

Held, that there could be no difference between the word "pay" and the word "wages" in the matter of computing the benefit of gratuity in the present case. The word "wages" and "pay" used by the Labour Court in the award Exhibit P-1 should be held to include dearness allowance and it was not possible to come to a different conclusion merely because the Labour Court had separately considered the question of basic pay and the question of dearness allowance in the same award.

Aiyar & Dolia, for Petitioner.

S. Balathandapani, for Respondent No. 2.

S.J. ——— *Petition allowed.*

T. Ramaprasada Rao, CJ. and
S. Natarajan, J.

Adilatchumy Ammal *v.* Ramaswamy Reddiar.

26th July, 1979.

L.P.A. No. 29 of 1976 (P.)

(A) *Will—Construction — Bequest in favour of 'A' and 'K' for life with powers of alienation — Vested remainder to 'S'—'S' predeceasing 'K'—Nature of estate, taken by 'K' — Substitution* fideicommissire, *definition of —Exception—'Wrongful'—Meaning according to French Law.*

(B) *Code Civil, Articles* 896, 1040 *and* 1041 *—Applicability.*

Substitution *fideicommissire* has been understood as a disposition by which the first beneficiary is juridically bound by an obligation to conserve during his lifetime the property and to pass on after his death to another beneficiary the subject of the gift or devise on condition that the latter will survive. This is how Article 896 in the Code Civil has been understood by Dalloz, the famous author and interpreter of the French Law. This method of disposition enjoins the first beneficiary to conserve the property during his lifetime. Under Article 896, according to Dalloz, the second beneficiary must be alive on the date of the death of the first beneficiary. Such thing is not present in the present disposition. Articles 1040 and 1041 instead of Article 896 of the French Civil Code would apply to the facts of the case.
This is not a case in which the bequest of 'S' is made conditional on the happening of an uncertain event. But on the other hand the intendment of the testator is to suspend the operation of the bequest in favour of 'S' during the lifetime of 'K'. Article 1041 therefore, directly applies to the facts of this case. Even in Indian Law under section 119 of the Indian Succession Act the date of vesting of the legacy when possession is postponed is made clear by the language of that section. According to this High Court an interest is said to be vested if it is not subject to any condition precedent, when it is to take effect on the happening of an event which is certain whereas an estate is contingent when the right to own it depends upon the happening of an uncertain event which may or may not happen. As there is an interregnum where a life-estate is followed by an absolute estate since the absolute estate must vest somewhere, the interpretation of the clause in the will under consideration leads to the only conclusion that by reason of the dispositive clause on the death of 'S' the interest vests in S. But the right to possession was postponed until after the death of 'K'. There was an interdict to 'K' not to alienate the property in any manner. But as she had possessory title to the property that limited right could be dealt with by her but without prejudice to the ultimate beneficiary namely 'S'. This subject could be approached in a slightly different angle also. What was granted to 'K' was the right to enjoy the usufruct. Under Article 617 of the Code Civil an usufruct is extinguished by the actual or civil death of the usufructuary. Having regard to this provision in the French Code, since the estate had already been vested in 'S' on the death of the testator, the heirs of 'S' are entitled to possession of the property on the death of 'K' who by reason of the lifeestate created in her favour in the first instance was entitled to possess it only till her lifetime. The bequest in favour of 'K' did not enable her to convey an absolute interest to the first defendant and the right which the first defendant secured was only the bare right of enjoyment over the suit property so long as 'K' was alive. If intended to convey any better right to the first defendant, it was void, as 'K' herself therefore would be entitled to a declaratory decree that she is the owner of the suit property and a consequential direction that the defendants do deliver possession of the suit property.

J. Satinslaus, R. Gopalakrishnan and *S. Mohandas*, for Appellant.

V. Ramakrishnan, for Respondent.

R.S. ——— *Letters Patent Appeal dismissed.*

V. Balasubrahmanyan, J.

G. Subramania Mudali *v.* Srinivasa Pillai.

2nd April, 1979.

A.A.O. No. 620 of 1975.

(A) *Civil Procedure Code* (*V of* 1908), *Order* 21, *rule* 105—*Execution — Auction purchaser moving Court for delivery—Application dismissed as no one was present — Application to set aside dismissal for default —Application filed beyond* 30 *days—Application for condonation of delay—Application allowed.*

(B) *Indian Limitation Act* (*XXXIV of* 1963), *section* 5, *not invokable in the instant case.*

G's property was sold in execution of a decree against him. The auction-purchaser obtained his sale certificate and moved the executing Court for delivery. The application was dismissed on the day when it was called and nobody appeared. The auction-purchaser moved the executing Court for setting aside the dismissal for default. This application was belated, filed as it was beyond 30 days. Hence the auction-purchaser filed also another application for condonation of delay. This application was opposed by the judgment-debtor on the ground that section 5 of the Limitation Act of 1963, expressly excluded from its purview all applications arising under the execution chapter of the Civil Procedure Code. The application was allowed holding that section 5 of the Indian Limitation Act, 1908, applied to the case. The judgment-debtor filed this appeal.

Held, the reference in Order 21, rule 105 (4) of the Civil Procedure Code to section 5 of the Limitation Act continued to refer, strictly and literally to section 5 of the old Limitation Act, 1908.

In Order 21, rule 105 of the Civil Procedure Code, the Madras High Court framed the rule expressly referring to section 5 of the Indian Limitation Act, 1908. This express mention of section 5 of the old Act amounted to an express non-inclusion of any subsequent amendment inconsistent with its original meaning and effect. In this view, section 5 of the new Limitation Act, 1963 could not be involved in the present case.

M. V. Chandran, for Appellant.

M. N. Padmanabhan, for Respondent.

S.J. ——— *Appeal dismissed.*

V. Ratnam, J.

P. Ramamoorthy *v.* N. B. Pattari Chettiar.

24th July, 1979.

C.R.P. No. 1068 of 1979.

Tamil Nadu Buildings (Lease and Rent Control) Act (XVIII of 1960), *as amended by Act (XXIII of* 1973), *section* 10 (3) (c) (d)—*Scope and applicability—Lease of non-residential building—Landlord requiring building for additional accommodation for the purpose of carrying on jewellery business—Hardship likely to be caused to the petitioner by ordering eviction, if would outweigh the advantage to landlord.*

The premises in the occupation of the petitioner, was a portion of a building on the western side of the entire building which belonged to the respondent. The petitioner took a lease of the premises for a period of three years for the purpose of running a coffee hotel. The lease was entered into by the first respondent and on behalf of the brother, the second petitioner, and the rent fixed was Rs. 4,500 per annum and the period of tenancy was three years. The second petitioner was conducting the hotel business and the first petitioner would occasionally visit and check the accounts. On the eastern portion of the entire building belonging to the respondent, the respondent was having a javuli business and a jewellery business. Finding it difficult and inconvenient run both the businesses within that area, the respondent wanted the premises in the occupation of the petitioners as additional accommodation in

order to conduct his jewellery business separately in a mere convenient manner. In addition, the respondent also stated that there was an intended partition and transfer of jewellery business to his four sons and the jewellery business had therefore to be kept separately from the javuli business. The petition for eviction was opposed by the tenants on several grounds and essentially on the ground that the hardship resulting to them by ordering eviction would outweigh the advantage to the landlord and therefore the eviction should not be ordered. The learned Rent Controller ordered eviction holding that he was not satisfied that the hardship caused to the petitioners would outweigh the advantage to the landlord. The Appellate Authority also confirmed the order of eviction. The tenant thereupon filed a petition to revise the order of eviction.

Held, that the Supreme Court in *Mst. Bega Begum and others* v. *Abdul Ahad Khan (dead) by legal representatives and others,* A. I. R. 1979 S. C. 272, had pointed out that in deciding the aspect of relative hardship, each party has to prove the relative advantages or disadvantages and that the entire onus cannot be thrown on the landlord to prove that lesser disadvantages will be suffered by the tenants and that they were reliable. The considerations to be taken into account in assessing the relative hardship were also set out and in particular it was pointed out that the inability to get similar accommodation anywhere in the city would be a weighty consideration, but that to insist on getting alternative accommodation of a similar nature in the same locality will be asking for the impossible. Applying these tests, it was clear in the instant case that very close to the premises in the occupation of the petitioners, other buildings were available, but the petitioners had not made any attempts whatever to secure them and having failed to do so, they cannot certainly be heard to complain that they are under a disadvantage by reason of the eviction order against them which will outweigh the advantage to the landlord, the application for eviction should be rejected. As the requirement of the premises in the occupation of the petitioners by the respondent as additional accommodation had been admitted by the petitioners, they cannot resist an order for eviction being made against them on the ground of relative hardship. A consideration of the circumstances as revealed by the evidence discloses that the tenants will not suffer any disadvantage at all by an order of eviction being passed against them since they can always shift their business to similar accommodation which was available in the locality and the securing of other accommodation cannot be considered to be a hardship that would outweigh the advantage to the landlord by an order for eviction in his favour. The view taken by the Appellate Authority is, therefore, perfectly correct and does not call for any interference in revision.

K. Chandrasekharan, E. Padmanabhan and *G. Ethirajulu,* for Petitioner.

N. S. Varadachari and *C. P. Pattabhiraman,* for Respondent.

R.S. ——— *Civil revision petition dismissed.*

Venugopal, J.

Kadakia Sons, Madras-1 *v.* S. R. A. Reddiar.

5th April, 1979.

S.A. No. 317 of 1976.

Partnership Act (IX of 1932), *section* 69 (2)—*Registered firm—Supply of goods in a trade name different from that of the Registered firm—Suit for value of — Suit in the name of the firm—Trade name not registered — Objection by defendants upheld by trial Court and lower appellate Court—Sustained by High Court on Second Appeal.*

The plaintiff M|s. Kadakia Sons, a registered firm supplied goods of the value of Rs. 1,175.07 to the defendants under the trade name, Imperial Products. As there was default in payment, the plaintiff filed a suit to recover the amount due. The defendants contended that they had dealings only with Imperial Products and that unless the plaintiff proved that they were the proprietors of the latter the suit as framed was not maintainable. The trial Court and the first appellate Court sustained the objection.

On second appeal;

Held: Under Order 30, rule 1 of the Civil Procedure Code a suit may be filed by the partners in the firm's name. To get the benefit of the provision and institute the suit in the firm's name, the registration of the firm with the Registrar of firms was a condition precedent. Order 30, rule 10 applies only to the case of a single individual carrying on business under a firm name and not to a partnership carrying on business under a firm name or assumed name. It follows that a partnership firm could not sue or be sued in a name other than its own which it had assumed for its business purposes. The trade name Imperial Products had not been registered with the Registrar of Firms. So the appellant was barred from filing the suit under section 69 (2) of the Partnership Act in respect of the transaction which it had carried on with the respondents under the trade name Imperial Products.

S. C. Shah and *D. Vasu,* for Appellant.

A. Shanmughavel, Jayalakshmi Shanmughavel and *Hamsala Rajendran,* for Respondent.

S.J. ——— *Appeal dismissed.*

Sethuraman, J.

K. Periaswamy Ambalam *v.* Pichayammal.

9th April, 1979.

S.A. Nos. 448 & 449 of 1976.

Tamil Nadu Cultivating Tenants Arrears of Rent (Relief) Act (XXI of 1972), *section* 3 — *Cultivating tenant — Relief for arrears of rent conditional on paying the entire rent for fasli* 1381—*Non-compliance would disentitle him from statutory concessions.*

The concession given to the tenant under the provisions of the Tamil Nadu Act XXI of 1972 was conditional on his paying the entire rent for fasli 1381 within the period of six months. If he did not comply with this condition, the statutory concession could not be extended to him.

P. Ananthakrishnan Nair, for Appellant.

R. Damodaran and *D. Nelson,* for Respondent.

S.J. ——— *Appeal dismissed.*

T. Ramaprasada Rao, CJ.

K. P. L. S. P. L. Firm, Colombo by its Partner K. P. L. S. P. L. Subramaniam Chettiar *v.* R. M. P. M. R. M. Subramania Chettiar.

21st June, 1979.

C.R.P. No. 3667 of 1976.

Civil Procedure Code (V of 1908), *Order* 1, *rule* 10—*Impleading parties — Suit by firm against four persons—Defence of all partners of the firm not brought on record or their names disclosed—Suit dismissed—Appeal by plaintiff—Application filed to implead all the partners as parties — Application, whether can be allowed.*

A suit was filed by a firm purporting to be a partnership firm against four persons. The

dispute was that all the partners constituting the plaintiff partnership, firm were not brought on record or their names disclosed. The suit was dismissed and an appeal as against the dismissal was preferred by the plaintiff-firm as it stood on record. In the course of the hearing of the appeal an application was taken out by the firm under Order 1, rule 10, Civil Procedure Code, seeking to implead the other partners as formal respondents to the appeal in order to overcome the technical difficulty which arose in the course of trial. The application was rejected by the lower Court on the ground it was belated. Against this order the present revision was filed.

Held: It was at the appellate stage the plaintiff filed an application to fill up the lacuna. For that purpose he took out an application under Order 1, rule 10, Civil Procedure Code, for impleading the legal representatives of the other partners, who by then had died and did not even seek any relief as against the proposed parties. The attempt was made in order to complete the record and to obviate any technical objection at the appellate stage. The proposed parties could not oppose, in the circumstances of the case, any claim or relief asked for by the plaintiff, because they were sailing along with the others. In fact, they were set *ex parte* in the Court below and they did not appear in the High Court. Obviously they had left everything to the only partner who was representing the firm and who was continuing the legal proceeding. In the absence of any fresh pleading, which is possible only by the proposed parties, it was difficult to see as to what prejudice would be caused to the contesting defendants by the proposed parties being brought on record. As it would neither prejudice the contesting defendants nor would put them to any inconvenience as it may not be necessary for them to file an additional written statement the surmise made by the District Judge appeared to be not justified in the instant case. The appellate Court ought to have allowed the application. The lower appellate Court was directed to implead the proposed parties as formal respondents to the appeal and proceed with the appeal in the manner known to law as if all the proper parties were before it.

S. V. Jayaraman and *V. Kannan,* for Petitioner.

R.S. —— *Civil revision petition allowed.*

T. Ramaprasada Rao, CJ.

Somasundara Kounder *v.* Krishna Kounder.

14*th June,* 1979.

C.R.P. No. 1939 of 1976.

Civil Procedure Code (V of 1908), *section* 148—Ex parte *decree passed in suit—Petition to set aside the* ex parte *decree—Petition allowed on payment of Rs.* 25 *on or before 6th April,* 1974 *as a condition precedent—Order not specifying as to whom payment should be made — 6th and 7th April holidays—Amount tendered in Court on 8th April—Refusal of head-clerk of civil Court to receive amount—Petition for grant of two days time for depositing amount—Petition dismissed on the ground that the petitioner ought to have paid it either to the party or the counsel—Revision allowed.*

In these days when social justice is the order of the day, Courts also have to align themselves with such environment which would generate harmony not only between the Court and litigant, but also between the Court and community at large. In the present case the following order was passed by the lower Court as a condition precedent for setting aside an *ex parte* decree:

"The petition will be allowed on payment of Rs. 25 on or before 6th April, 1974 as a condition precedent, failing which the petition shall stand dismissed."

The sixth and seventh of April, 1974, were holidays. The order did not specify as to whom the payment should be made, namely the party or the counsel or whether it should be deposited in Court to the credit of the suit. The petitioner took one of such available courses and tendered the amount on the 8th April. 1974, to the Head Clerk, civil Court who refused to receive the same. The petitioner filed an application to the Court to grant him two days' time for depositing the amount which was available with him but

which he could not pay within time as directed. This was refused on the ground that the petitioner ought to have paid it either to the party or to counsel. As it was not in dispute that 6th and 7th of April, 1974 were holidays, the amount was tendered on the 8th of April, 1974, to the Head Clerk and it was therefore a *bona fide* tender. In this perspective the elements of social justice should also be borne in mind, while administering legal justice. The Court below was wooden in having refused the short time which was prayed for to enable the petitioner to pay the costs. Section 148 of the Code of Civil Procedure, enables the Court to pass such orders. There is thus an error apparent in the order of the Court below. The order is therefore set aside. The costs directed to be paid by the petitioner were now paid to counsel appearing in the Court for the respondent. The petitioner shall also pay a sum of Rs. 50 to the respondent towards the cost of these proceedings. The civil revision petition is accordingly allowed.

K. S. V. Prasad, for *R. S. Venkatachari*, for Petitioner.

R. Balasubramanian, for Respondents.

R.S. —— *Petition allowed.*

T. Ramaprasada Rao, CJ.

S. A. M. Jazeema Beevi *v.* **Easwarlal Patel.**

22nd June, 1979.

C.R.P. Nos. 2887 to 2890 of 1979.

(A) *Tamil Nadu Buildings (Lease and Rent Control) Act (XVIII of* 1960), *as amended by Act (XXIII of* 1973), *section* 14 (1) (b) —*Petition for eviction by the power-of-attorney-holder from the landlady—Petition, whether maintainable.*

(B) *Tamil Nadu Buildings (Lease and Rent Control) Act (XVIII of* 1960) *as amended by Act (XXIII of* 1973), *section* 2 (b) — *"Landlord"—Definition.*

These civil revision petitions arose out of a common order made by the Rent Control Appellate Authority in an application filed by the petitioners as landladies for evicting four tenants, each of whom was a respondent in each of the civil revision petitions on the ground that the petitioners required the premises for the purpose of demolition and reconstruction. The Rent Controller as well as the appellate authority went into the question whether the petitioner satisfied all the prescriptions laid down in section 14 (1) (*b*) of the Tamil Nadu Buildings (Lease and Rent Control) Act (XVIII of 1960). The concerned finding of fact was that the petitioners had clearly established and satisfied their *bona fide* intention to demolish the building and put up a construction as soon as they obtained delivery of possession of the demised premises. This concurrent finding of fact had not been challenged in the revision petition. But the question whether the petition filed by the power-of-attorney agent of the landladies was maintainable in law was the main subject dicussed by both tht Rent Controller and the Appellate Authority. The Rent Controller held that the petition was maintainable and granted an order for eviction. The Appellate Authority took a different view. The power-of-attorney was given by each of the landladies who were co-owners, with the person who presented the petition in that capacity. The power-of-attorney in each case was the same and a general one. Under clause (1) the attorney was authorised to let the property to a tenant at such rates as may be favourable; by clause (2) he was authorised to file petitions for fixation of fair rent and for eviction of tenants, before the competent authorities and further prosecute the proceedings in appeals before statutory functionaries; clause (9) enabled the attorney to carry out repairs, remodel or renovate, reconstruct or alter all or any of the landlady's properties whenever necessary and for that purpose incur the necessary expenses and to engage qualified workmen to carry out the abovesaid items of works. In the last paragraph of the power the landlady agreed to satisfy and confirm all the acts, deeds and things which the said attorney may lawfully do or cause to be done by virtue of the power-of-attorney, as if such acts, deeds and things were done by the landlady herself in her own person.

Under the definition of 'landlord' any person who is receiving or is entitled to receive the rent whether on his own account or on behalf

of another or as an agent is therefore privileged to file an application for eviction under the provisions of the Act. Section 10 sets out the various conditions under which a landlord can seek for the eviction of a tenant. Under section 10 (8), if a person is authorised to receive the rent or is entitled otherwise to receive the rent merely as an agent of the landlord, he will not without the previous written consent of the landlord be entitled to apply for the eviction of tenant. The emphasis therefore is on the expression "merely as an agent". If the receipt of rent is only as an agent then such an agent should be equipped with a permission in writing previously by the landlord to entitle him to seek for the eviction of a tenant. Section 14 is a special provision in that Act for recovery of possession by the landlord for repairs or for reconstruction. Whilst section 14 (1) (*a*) deals with a contingency in which the landlord intends to carry out repairs which cannot be carried out without the building being vecated, section 14 (1) (b) provides for another contingency in which recovery of possession for reconstruction of the building can be sought for. It says that an application can be made by the landlord, if the building is required *bona fide* by the landlord for the immediate purpose of demolishing it and if such demolition is to be made for the purpose of erecting a new building on the site of the building sought to be demolished. If *bona fide* is established, then the statutory authorities under the Act can pass an order directing the tenant to deliver possession of the building to the landlord before a specified date. But such an order, however, is circumscribed by the specific prescription in section 14 (2) (*b*) of the Act. Section 14 (2) (*b*) provides that no order directing the tenant to deliver possession of the building under section 14 (1) (*b*) of the Act shall be passed, unless the landlord given an undertaking that the work of demolishing any material portion of the building shall be substantially commenced by him not later than one month and shall be completed before the expiry of three months from the date he recovers possession of the entire building or before the expiry of such further period as the Controller may for reasons to be recorded in writing allow. The power-of-attorney, contains a provision by which the landlords have agreed to confirm and ratify all acts, deeds and things which the attorney may lawfully do or cause to be done. This provision would certainly enable the competent Authority under the Act take penal action not only against the agent but also against the principal for any failure to keep up to the undertaking. The Appellate Authority surmises that an unscrupulous landlord might avoid penal consequences by putting the attorney in the forefront and asking him to give an undertaking and thereafter attempt to wriggle out of it by stating that he was not responsible for such an undertaking. It all depends upon the facts and circumstances of each case. Under the power-of-attorney under review, power is given to the attorney to carry out repairs, remodel, renovate, reconstruct or alter all or any of the properties, incur the necessary expenses for the same and engage qualified workmen to carry out the said items of work. The undertaking in the present case is therefore one coming within the meaning of section 14 (2) (*b*) of the Act, and the principal or landlord cannot escape the penal consequences for the non-performance of the undertaking by astute arguments or contentions on the basis that the undertaking was only given by the agent.

In this case the undertaking given by the power-of-attorney was one which satisfied the requirements of section 14 (2) (*b*) of the Act and such an undertaking binds the principal in view of the express recitals in the power-of-attorney, and no more undertaking was necessary from the landladies themselves. The application was held to be maintainable and the petitioners were entitled to an order of eviction under section 14 (1) (*b*) read with section 14 (2) (*b*) of the Act.

F. A. Rasheed, for Petitioner.

V. Narayanaswami, for Respondent.

R.S. ——— *Civil Revision Petition allowed.*

T. Sathiadev, J.

K. E. Subramanian Chettiar *v.* D. K. M. Muthammal.

17th August, 1979.

C.R.P. No. 1016 of 1978.

Tamil Nadu Buildings (Lease and Rent Control) Act (XVIII of 1960), *(as amended by Act XXIII of* 1973), *section* 14 (1) (b)—*Requirement of building by landlord for demolition—Tests applicable.*

A landlady filed a petition under section 14 (1) of the Tamil Nadu Buildings (Lease and Rent Control) Act XVIII of 1960, claiming that she intended to demolish and reconstruct the building, which was in the occupation of the tenant for non-residential purposes. The landlady claimed that the building was an old one, that it was situate in the heart of the town, and she desired to put up a pucca reinforced concrete structure, which had been approved by the Municipality. The tenant claimed that he had been a tenant during the past 45 years running a jewellery shop. He claimed that he was keeping the shop in a safe and attractive condition and there was no need to pull down the present structure and that the object of the landlady was only to evict the tenant and secure higher rent.

The Courts below came to the conclusion that the landlady had a *bona fide* intention to demolish and reconstruct the building and, therefore, ordered eviction. Aggrieved by the finding, the tenant filed a Civil Revision Petition to the High Court.

Held, it was claimed by the landlady that the building was 70 years old and the admitted case of the tenant was that he had been a tenant during the past 45 years. This by itself would show that the building was an old one. The tenant claimed that to prevent the building from falling down he had put up a false ceiling at a cost of Rs. 5,000 or Rs. 6,000. This would suggest that the building was in a dilapidated condition and it was only due to the so-called efforts taken by the tenant it had been prevented. So far as the landlady was concerned, she had by her admission in her evidence established that the building was in a condition in which the ceiling was about to fall, and, therefore, she had wanted to demolish and reconstruct the building. It was precisely this aspect, the Appellate Authority had taken into account and come to the conclusion that the petitioner's shop was an old building and required demolition and reconstruction. The conclusion of the Appellate Authority that the building required demolition and reconstruction was clearly established. The plans produced by the landlady showed to what extent she intended removing the existing structures and bring into existence a new building. It was not the intention of the landlady to confine the construction by replenishing the roof alone. In this case, the *criteria* that had been pointed out by the Supreme Court in *Metal Ware and Company* v. *Bansilal Sharma,* (1979) 2 S.C.J. (N.R.C. 3) and which require to be taken into account while ordering a petition under section 14 had been taken into account, and the statutory authority had on a question of fact, come to the conclusion that the condition of the building required demolition and reconstruction. Hence there was no justification to interfere with the order of the Appellate Authority. Taking into account the difficulty to which the tenant may be put by ordering immediate eviction, and that a reasonable time may be granted to him three months time till 30th November, 1979 was given for delivering vacant possession.

Mrs. Nalini Chidambaram, for Petitioner.

K. Srinivasan and *K. Raghunath,* for Respondent.

R.S. ——— *Civil revision petition dismissed.*

A. Varadarajan, J.

S. Ramamurthy *v.* The Management of Neyveli Lignite Corporation Ltd., Neyveli.

21st June, 1979.

W.P. No. 3890 of 1976.

Constitution of India (1950), *Article* 226—*Petitioner employee of the Neyveli Lignite Corporation—Charged with theft of article belonging to corporation — Domestic enquiry,*

—Conducted by plant engineer—Punishment of dismissal awarded — No proof of alleged stolen article belonging to the corporation or any of its employees—Theft held not proved —Plant engineer not proved to be competent authority to hold enquiry—Punishment of dismissal not upheld.

The petitioner was employed as a store-keeper of the Neyveli Lignite Corporation Limited. On 21st June, 1973, when he was coming out of the factory, his cycle was checked by the watchman and he was taken to the Sainik's room. It was alleged that a brass-screw 1' in length and 1.2 kg. weight was removed from his cycle where it had been kept wrapped in a khaki cloth. A statement was recorded and the petitioner admitted that the rod was found in the khaki cloth and further stated that it was not known how it come to be placed on his cycle. A charge memo. was issued and the petitioner was suspended from service. Subsequently an enquiry was held by the Plant Engineer of the Management. Charges were held to be proved and the petitioner was dismissed from service. The petitioner unsuccessfully preferred appeal as provided by the rules and subsequently raised on Industrial dispute under section 2-A of the Industrial Disputes Act. The petitioner contended that the Plant Engineer who conducted the enquiry was not the competent authority. But the Labour Court negatived the contention and the charges were held proved and that the petitioner was not entitled to any relief. On a writ petition by the petitioner,

Held, that according to Standing Order 47 (*c*) of the Standing Orders which came into force on 31st January, 1971, the employees of the company authorised to hold the proceedings shall be specified by the management from time to time. If it was in force on the date of the enquiry in the present case, it was only the stores officer, who would have been the competent authority to hold the disciplinary proceedings and empowered to award the major punishment of dismissal. But the enquiry had been held and the punishment of dismissal awarded, only by the Plant Engineer. No doubt, in the first appellate order it was stated that the Plant Manager or the Plant Engineer was the competent Authority, to impose the punishment. But it was not stated in that order that the Plant Engineer had been authorised by the Management as required by the Standing Order to hold the enquiry and empowered to award the punishment of dismissal. No doubt in the second appeal memo. the petitioner had not raised this question once again. It was not possible to hold from this circumstance that the petitioner had abandoned this contention; since he had repeated the contention what had been raised in the first appeal. The Management had not produced any record to show that the Plant Engineer who held the enquiry and awarded punishment of dismissal was authorised in this behalf by the management. The Labour Court's conclusion on the matter was not acceptable. The objection raised by the petitioner that the Plant Engineer has not been proved to be the competent Authority has to be upheld.

One of the ingredients of the offence of theft is that the property involved must belong to some person and the person alleged to have committed theft in respect of that property must have moved that property. In the absence of any finding at the enquiry that the rod removed from the carrier of the petitioner's cycle when he was leaving the premises of the Management was property either of the Management or any workmen employed under the Management or that it was lying in any workshop or any premises belonging to the company before it was found on the carrier of the petitioner's cycle, it is not possible to hold that the petitioner had committed theft of the rod or offence of unlawfully removing the rod from any workshop or any premises belonging to the company. The punishment of dismissal awarded to the petitioner was therefore invalid. Accordingly the order of the Labour Court was liable to be quashed.

R. Ganesan, for Petitioner.

S. Gopalaratnam and *N. Balasubramaniam*, for Respondents.

R.S. —— *Writ petition allowed.*

Padmanabhan, J.

K. Ramaswamy *v.* Government of Tamil Nadu.

10*th July,* 1979.

W.P. No. 847 of 1977.

Industrial Disputes Act (*XIV of* 1947), *section* 11-*A—Workman dismissed after domestic enquiry—Refusal of Government to raise an industrial dispute—Order of Government challenged—Government's failure to state whether punishment was in proportion to the misconduct—Government order not in accordance with section* 11-*A—Writ of* certiorari *issued — Constitution of India* (1950), *Article* 226.

The petitioner, an employee with the 2nd respondent was dismissed from service after a domestic enquiry. The petitioner approached the State Government to raise an industrial dispute regarding his non-employment by the second respondent. The State Government passed an order stating that the charges against the workman had been proved in the properly conducted enquiry and that the Government did not consider it necessary to refer the issue in dispute for adjudication. The petitioner filed a writ petition challenging the Government order as not in accordance with sections 12 (5) and 11-A of the Industrial Disputes Act.

Held: A perusal of section 11-A made it clear that the lower court could even hold that the proved misconduct did not merit punishment by way of discharge or dismissal, and therefore could award to the workmen any lesser punishment. The section conferred power on the Tribunal to interfere with the punishment imposed in the domestic enquiry and alter the same. Such being the legal position one of the relevant factors which the Government should have borne in mind before refusing to refer the dispute for adjudication was the question whether the proved misconduct did merit the punishment of discharge or dismissal. The impugned order did not show that this fact was taken into consideration before it was passed.

When once the High Court was satisfied that the Government had not applied its mind to the provisions contained in section 11-A of the Industrial Disputes Act, it would be open to the High Court to quash the order of the State Government.

A. L. Somayaji, for Petitioner.

N. R. Chandran, for Government Pleader.

K. Ramanurthy, for Respondent No. 2.

S.J. ——— *Petition allowed.*

Maheswaran, J.

Muthuswamy Gounder *v.* C. P. Singharam.

29*th June,* 1979.

Crl.R.C. No. 44 of 1978.
Crl.R.P. No. 44 of 1978.

Criminal Procedure Code, 1973 (*II of* 1974), *section* 197, *Tamil Nadu District Police Act* (*XXIV of* 1859), *section* 10—*Private complaint—Inspector of Police an accused—Sanction of Government not necessary for prosecution, the Inspector being only a Subordinate Police Officer within section* 10 *of the Police Act.*

In a private complaint filed by *M,* the 12th accused was an Inspector of Police. The Chief Judicial Magistrate discharged the 12th accused on the ground he was a gazetted officer and that sanction of the Government was necessary. Against this, *M* filed a revision.

Held: The Inspector of Police was a Subordinate Police Officer. The expression "Subordinate Police Officer" shall mean police officers of and below the rank of an Inspector. Therefore, the Inspector-General, Deputy Inspector-General or District Superintendent of Police may dismiss or reduce to a lower post or time scale, or to a lower stage in time scale, any officer of the Subordinate Police whom they think remiss or negligent in the discharge of his duty. It was therefore clear that no sanction of the State Government for the prosecution of the 12th accused-respondent was necessary. The order of the Chief Judicial Magistrate was incorrect. The revision was therefore allowed.

T. S. Arunachalam, for Petitioner.

T. K. Parasuraman, for Public Prosecutor, for State.

S.J. ——— *Revision allowed.*

T. Sathiadev, J.

Komalam Ammal *v.*

Asoka Cycle and Motor Company.

15*th July,* 1979.

C.R.P. No. 555 of 1977.

Tamil Nadu Buildings (Lease and Rent Control) Act (XVIII of 1960) (*as amended by Act XXIII of* 1973), *section* 10 (2) (i), (*vi*)—*Petition for eviction by landlady alleging wilful default by tenant in paying rent and failure to use the building for the purpose it was leased—Defence of landlady agreeing to receive the rent in lump sum — Entire arrears paid immediately after receipt of notice—Landlady living in the upstairs of the demised premises—Husband of landlady a practising lawyer—No action taken by him against the tenant—Conduct of the landlady and her husband supporting the case of the tenant — Eviction whether could be ordered.*

In this case, the period of non-payment of rent was not less than 33 months. The landlady and her husband, an advocate resided in the upstairs portion. They had not sent any notice of demand. This inaction on the part of the landlady's husband who is quite conversant with the ingredients which would result in "wilful default" and the right to get an order of eviction, would suggest that the version of the tenant that the first respndent had been told by the landlady that she would receive the rents in lump sum is quite probable.

In this case it was admitted that though originally the premises had been given for carrying on trade in cycle spare parts, later on with the consent of the landlady, business in steel furniture was started. The tenants had got also another premises 16 shops away. In cases like this it was not uncommon for the commercial community to have more than one premises one for storing the materials and utilising the other premises as show roon etc. Where the evidence adduced by th landlady was insufficient, it will not be opei to her to remark that because certain book of accounts and other ledgers demanded by her had not been produced in the proceedings adverse conclusion should be drawn agains the tenants.

In this case it had been satisfactorily mad out that the landlady had agreed to receiv the rents in a lump sum and when she ha so agreed, in a petition filed under Act XVII of 1960, she could not contend that mer non-payment of rent, will have to be cons trued as wilful default. Therefore th Appellate Authority was in order in reject ing both contentions and in turn dismissin the petition for eviction.

P. Raghaviah, for Petitioner.

R. Srinivasan, for Respondent.

R.S. ——— *Civil revisio petition dismissed*

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Maheswaran, J.

P. M. Krishnamoorthy *v.* The State of Tamil Nadu.

31*st August,* 1979.

Crl.R.C. No. 654 of 1976.

Tamil Nadu Kerosene (Regulation of Trade) Order (1973), *clauses* 5 (3), 18—*Kerosene shop—Inspection by Inspector of Food Cell—Shortage of kerosene found not explained—Confiscation of* 2655 *litres of kerosene by Collector confirmed by Sessions Judge—Revision to High Court—"Incorrect maintenance of accounts" — Confiscation of half the stock adequate punishment.*

On 16th June, 1975, the Inspector of Food Cell, Hosur, accompanied by Revenue Officials inspected the shops of the petitioner who was a licensed kerosene dealer. The entries in the stock register showed an opening balance of 3040 litres as on 15th June, 1975 and a sale of 240 litres of kerosene. No sales were shown for 16th June, 1975. There should have been a stock of 2800 litres, but there was only 2655 litres of kerosene and there was a shortage of 145 litres A notice was issued to the petitioner by the Collector to show cause against the confiscation of the entire stock of 2655 litres of kerosene. Not satisfied with the reply, the entire stock was confiscated and on appeal before the Sessions Judge, the learned Judge confirmed the order of confiscation. In revision to the High Court, the petitioner pleaded it was only a case of incorrect maintenance of accounts.

Held: It was a case of not maintaining the accounts properly. This was not a fit case where the entire stock of 2655 litres of kerosene should be confiscated. Confiscation of half the seized stock would be adequate punishment for the revision petitioner.

C. Lakshmi Narain, for Petitioner.

Public Prosecutor, for State.

S.J. ——— *Revision partly allowed.*

V. Ratnam, J.

Abdul Latif Rowther *v.* Govindan Pillai.

11*th October,* 1979.

S.A. No. 1038 of 1976.

(A) *Mohamedan Law—Requisites of a valid gift —Gift of the corpus or substance* (Ayn) *and the gift of the usufruct or the fruits* (Manafi) *of the property—Distinction.*

(B) *Deed—Construction.*

In Mohamedan Law, there is a clear distinction between a gift of the corpus or substance (*Ayn*) and the gift of the usufruct or the fruits (*Manafi*) of the property. *Ayn* is the transfer, without consideration of the right to enjoy the *manafi* or the benefit or to take the profits of the property, movable or immovable or such transfer of the right of the enjoyment or the use of usufruct thereof. *'Ayn'* oftentimes referred to as the substance or corpus of the thing itself can be given away and this is known as hiba. Thus the corpus of the property may vest in one person and the usufruct may vest in another person for a limited time and this may happen in several ways. There may be a transfer of the property by the donor to the donee without any retention of dominion over the corpus of the donor, but with a condition that the whole or part of the usufruct would be made available to him or would be used by him during his lifetime. Indeed, the donor may also give the corpus with possession to one person and the usufruct to another for a limited period. A third case can also be conceived of where possession is given to the donor of the usufruct for life and the corpus is to be taken by another person. The Privy Council has also recognised the distinction between *Ayn* and *Manafi* in *Sardar Nawazish Ali Khan* v. *Sardar Ali Razakhan,* (1948) 75 I. A. 62: (1948) 2 M.L.J. 303: 61 L.W. 578: A. I.R. 1948 P.C. 134.

In the instant case, the recitals in the document clearly and unambiguously indicated that *'A'* was given only the right to enjoy the usufruct in the property (*manafi*) and this interest was limited in point of time to her lifetime and over the corpus of the property

(*ayn*), absolute rights had been created in favour of the only daughter of the plaintiff and *'A' viz.*, *'H'* subject to the *manafi* interest in favour of *'A'*. There was no retention of any benefit in respect of any of the properties in the settlor, and he had totally divested himself of the property as a whole. Therefore on the death of *'A'* her *manafi* right in the suit property terminated and the corpus (*ayn*) as well as the usufruct (*manafi*) became that of *'H'*. Even during the lifetime of *'A'*, her *manafi* rights had become effaced and *'H'* become the owner of the property, which she was competent to dispose of in favour of the defendants.

S. Raghavan, for Appellant.

V. Raghupathy, for Respondent.

R.S. ——— *Second appeal dismissed.*

[End of Volume (1979) 2 M.L.J. (Notes of Recent Cases).]

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